

Opinion No. 59-21

March 9, 1959

BY: FRANK B. ZINN, Attorney General

TO: Mr. J. C. Hester State Investment Officer Division of Investment Department of Finance & Administration Santa Fe, New Mexico

State Investment Officer may use service of investment counsellor or other sources of advice to aid in making investment policy recommendation to Investment Council

OPINION

{*31} In a recent letter you requested an opinion as to whether you as state investment officer might employ, on a fee basis, an investment counsellor.

It is my opinion that you can employ the services of an investment counsellor for certain limited purposes.

Chapter 179, Laws of 1957 (§ 11-2-8, N.M.S.A., 1953 Compilation, P.S.) and Article 12, Section 7 of the New Mexico Constitution, spell out the authority and duties of the state investment officer and the investment council.

Article 12, Section 7, says that the permanent funds are to be invested by "the state investment officer in accordance with policy regulations promulgated by a state investment council" and the same {*32} proviso sets up the standards to be employed by the investment officer in selecting the investments. The essentials of this provision are carried forward in § 11-2-8, N.M.S.A., 1953 Compilation, P.S.

In 73 C.J.S. 380, there is stated in succinct terms the limitations upon the delegation of duties and responsibilities by administrative officers or bodies.

"Administrative officers and bodies cannot alienate, surrender or abridge their powers and duties, or delegate authority and functions which under the law may be exercised only by them; and although they may delegate merely ministerial functions, in the absence of statute or organic act permitting it, they cannot delegate powers and functions which are discretionary or quasi-judicial in character, or which require the exercise of judgment."

In my opinion whether the investment officer could employ an investment counsellor on a fee basis depend entirely upon what function this counsellor is to perform for the state investment officer. If the investment officer deems it necessary he can properly avail himself of all sources of information that will enable him to carry out his responsibility in making investments and in advising the council as to his views on sound policy. Advice of an investment counsellor, the services and publications of investment houses, or any

other competent source of information and advice could and should be sought. However, no employment of a counsellor on a fee basis or otherwise should be undertaken if done as a means of placing in that counsellor's hands the decision making power as to the making of investments, sale of securities held, or the direct recommending for adoption to the investment council of regulations or policies.

I believe that the standards outlined in the quotation from Corpus Juris will aid you in deciding the duties to impose upon the members of your staff as well as the qualifications they might be required to possess.